

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TRUSTEES OF THE PLUMBERS AND GASFITTERS'
LOCAL UNION NO. 12 WELFARE, PENSION, ANNUITY,
VACATION & XMAS AND FRINGE BENEFIT FUNDS;
PLUMBERS AND GASFITTERS LOCAL 12; AND
PLUMBERS' UNION NO. 12 LABOR MANAGEMENT
COOPERATION TRUST FUND,

Plaintiffs - Creditors

VS.

McGLONE PLUMBING, INC.

Defendant - Debtor

Civil Action No.
05-CV-11510 (PBS)

June 1, 2006

**APPLICATION FOR SUPPLEMENTARY PROCESS
FOR EXAMINATION OF JUDGMENT DEBTOR**

Pursuant to Rule 69(a) Fed.R.Civ.P., the above captioned Plaintiffs-Creditors Plumbers Local 12 Trust Funds, by and through their attorneys, Robert M. Cheverie & Associates, P.C., hereby submit application to this Court for supplementary process pursuant to Mass.Gen. Laws. ch. 224, § 14 for examination of the Judgment Debtor, McGlone Plumbing, Inc. ("McGlone Plumbing" or "Judgment Debtor").

Federal Rule of Civil Procedure provides the mechanism for enforcing a judgment for the payment of money." *Fed. R. Civ. P. 69(a)*, see also, *United States v. Neumann*, 43 Fed. R. Serv. 3d 659 (1999). The rule states that "the judgment creditor .

. . . . may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which the district court is held." *Id.*; see also *United States v. Timilty*, 148 F.3d 1, 4 (1st Cir. 1998).

Massachusetts' supplementary process law provides in part that:

A judgment creditor or a person in his behalf may file in court an application for supplementary process Upon the filing of such an application, a summons may issue, requiring the judgment debtor to appear at a time and place named therein and submit to an examination relative to his or its property and ability to pay.

Timilty at 5, quoting, *Mass. Gen. Laws ch. 224, § 14*.

For the following reasons, Plaintiffs-Creditors respectfully request that the Court grant the instant Application:

1. A Judgment entered in Plaintiffs Local 12 Trust Funds' favor in the amount of **\$8,431.33** against Defendant McGlone Plumbing by Court Order dated January 18, 2006 (**Attachment 1**).
2. The Judgment concerns delinquent Trust Funds contributions owed by McGlone Plumbing to Plaintiff Health, Pension, Annuity and other Funds for the month of July 2005 on behalf its plumbing employees.
3. The Trustees of the Funds have a fiduciary duty to protect Plan assets and, therefore, must make diligent and reasonable efforts to collect the delinquent Funds contributions owed by Judgment Debtor McGlone Plumbing.

4. By letter dated January 31, 2006 attorney for Plaintiff-Creditor Plumbers Local 12 Funds forwarded to Judgment Debtor McGlone Plumbing a copy of the Judgment and a settlement proposal (**Attachment 2**).

5. Daniel T. McGlone, President of McGlone Plumbing, represented that he was interested in resolving the Judgment debt through installment payments but then did not identify an amount, did not submit any payment, and ceased communications.

6. By letter dated May 19, 2006, attorney for Plumbers Local 12 Funds forwarded to Judgment Debtor McGlone Plumbing a second Notice of Judgment and request for payment (**Attachment 3**).

7. A telephone message was left for McGlone Plumbing at its business telephone number (781) 843-4604 requesting a response to the aforementioned letters. No response was received.

8. Defendant Judgment Debtor McGlone Plumbing, Inc., through its President Daniel T. McGlone, has failed to pay any amounts toward the Judgment.

WHEREFORE, Plaintiff-Creditor Plumbers Local 12 Trust Funds request, pursuant to Fed. R. Civ. P. 69(a) and *Mass. Gen. Laws ch. 224, § 14*, that Daniel T. McGlone, President of Defendant Judgment Debtor McGlone Plumbing, Inc., be ordered to appear before this Court then and there to be examined under oath concerning his or its property and ability to pay the Judgment. Enclosed herewith is a proposed Summons and Notice of Hearing for Examination for completion by the Court and return to Plaintiffs for due service upon Judgment Debtor.

ATTORNEYS FOR THE PLAINTIFFS,

By: 

Robert M. Cheverie, Esq.

John T. Fussell, Esq.

ROBERT M. CHEVERIE, &
ASSOCIATES, P.C.

333 East River Drive, Suite 101

East Hartford, CT 06108

(860) 290-9610

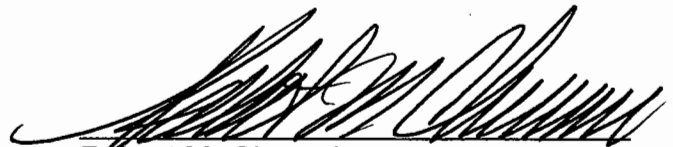
rcheverie@cheverielaw.com

BB0# 082320

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Application for Supplementary Process for Examination of Judgment Debtor has been mailed, first-class and postage prepaid, this 1st day of June 2006 to the following:

Daniel T. McGlone, President
McGLONE PLUMBING, INC.
111 French Avenue
Braintree, MA 02184

A handwritten signature in black ink, appearing to read 'Robert M. Cheverie', written over a horizontal line.

Robert M. Cheverie

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TRUSTEES OF THE PLUMBERS AND GASFITTERS'
LOCAL UNION NO. 12 WELFARE, PENSION, ANNUITY,
VACATION & XMAS AND FRINGE BENEFIT FUNDS;
PLUMBERS AND GASFITTERS LOCAL 12; AND
PLUMBERS' UNION NO. 12 LABOR MANAGEMENT
COOPERATION TRUST FUND,

Plaintiffs

VS.

McGLONE PLUMBING, INC.

Defendant

Civil Action No.
05-CV-11510 (PBS)

June 1, 2006

**SUPPLEMENTARY PROCESS SUMMONS TO DEBTOR
NOTICE OF HEARING
ORDER FOR EXAMINATION**

TO ANY PROPER OFFICER:

The foregoing Application having been presented to the Court, it is ordered that Daniel T. McGlone, President of McGlone Plumbing, Inc., at 111 French Avenue, Braintree, Massachusetts 02184 [Tele 781-843-4604], the Judgment Debtor, appear before the undersigned or before _____, Judge of the United States District Court for the District of Massachusetts, at _____, Massachusetts on _____, 2006, at _____ AM/PM,

then and there to be examined under oath concerning its property and means of paying the Judgment described in the Application.

NOW, THEREFORE, by authority of the United States of America, you are hereby commanded to give notice of the pendency of the Application and summon the Judgment Debtor to appear at the place, date and time set for the examination by serving on him, in the manner prescribed by law for the service of civil process, a true and attested copy of the foregoing Application and of this Summons and Order at least seven (7) days before the date of the hearing.

Hereof fail not, but due service and return make.

Dated at _____, Massachusetts, this _____ day of _____, 2006

By the Court,

PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

ATTACHMENT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TRUSTEES OF THE PLUMBERS AND GASFITTERS'
LOCAL UNION NO. 12 WELFARE, PENSION, ANNUITY,
VACATION & XMAS AND FRINGE BENEFIT FUNDS;
PLUMBERS AND GASFITTERS LOCAL 12; AND
PLUMBERS' UNION NO. 12 LABOR MANAGEMENT
COOPERATION TRUST FUND,

Plaintiffs

VS.

McGLONE PLUMBING, INC.

Defendant

Civil Action No.
05-CV-11510

December 28, 2005

**ORDER
FOR ENTRY OF JUDGMENT BY DEFAULT**

Defendant McGlone Plumbing, Inc., having not appeared, answered, or defended in this action and the Court having allowed the Notice of Default to issue by Order dated December 14, 2005.

Now, upon application of the Plaintiffs and Affidavits demonstrating that Defendant owes Plaintiffs the sum certain of *Six Thousand Three Hundred Eleven Dollars and Sixty-Four Cents (\$6,311.64)* for delinquent Funds contributions; *Four Hundred Twenty-Four Dollars and Fifty-One Cents (\$424.51)* in unpaid late fees; that Defendant is not an infant or incompetent person or in the military service of the United States; and that Plaintiffs have incurred costs in the amount of *Two Hundred*

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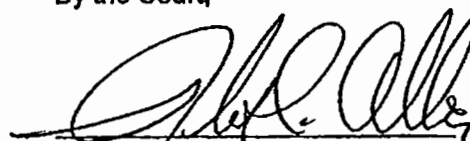
Ninety-Five Dollars and Eighteen Cents (\$295.18), and attorney's fees in the amount of ***One Thousand Four Hundred Dollars (\$1,400.00)***, it is hereby:

ORDERED, ADJUDGED and DECREED that Plaintiffs recover from Defendant McGlone Plumbing Inc. Funds contributions in the amount of **\$6,311.64**, late fees in the amount of **\$424.51**, costs in the amount of **\$295.18**, and attorneys fees in the amount of **\$1,400.00**, for a total judgment of **\$8,431.33**.

Plaintiffs may also recover post-judgment interest as provided by law.

By the Court,

Dated: January 18, 2006


Deputy Clerk

ATTACHMENT 2

ROBERT M. CHEVERIE & ASSOCIATES P.C.

ATTORNEYS AND COUNSELLORS AT LAW

ROBERT M. CHEVERIE*
THOMAS M. BROCKETT
JOHN T. FUSSELL
GREGORY S. CAMPORA**

*ALSO ADMITTED IN MASSACHUSETTS
**ALSO ADMITTED IN NEW YORK

COMMERCE CENTER ONE
333 EAST RIVER DRIVE, SUITE 101
EAST HARTFORD, CONNECTICUT 06108



TELEPHONE 860-290-9610
FAX 860-290-9611
E-MAIL INFO@CHEVERIELAW.COM

January 31, 2006

Daniel T. McGlone, President
McGLONE PLUMBING, INC.
111 French Avenue
Braintree, MA 02184

*In response, please refer to:
Our File No. 05-347-FED-JTF*

**Re: PLUMBERS LOCAL NO. 12 TRUST FUNDS
NOTICE OF JUDGMENT**

Dear Danny:

Enclosed please find a Judgment in the sum of **\$8,431.33** entered against McGlone Plumbing by Order of the Federal District Court on January 18, 2006. As noted in the Judgment, **\$6,311.64** represents delinquent Funds contributions you owe Plumbers Local 12 Funds for the month **July 2005**. **\$424.51** of the Judgment represents unpaid late fees that accrued as of the time of lawsuit. **\$295.18** of the Judgment represents costs incurred by the Funds in filing and serving the lawsuit. **\$1,400.00** of the Judgment represents attorney's fees incurred in drafting and pursuing the lawsuit to judgment. In addition, the Judgment provides for post-judgment interest that will accrue each month on the Judgment sum of **\$8,431.33**. At one percent (1%) per month, interest will accrue this month at the rate of **\$84.31** and each month thereafter that the Judgment is not paid.

Plumbers Local 12 has a fiduciary duty to pursue this Judgment. I am sure that, given your long association with Plumbers Local 12, you too have an interest in resolving this matter. In addition, it has been the policy not to provide Local 12 plumbers to a delinquent contractor with an unresolved judgment. Accordingly, if you consider returning to the business as a signatory contractor, you will have to resolve this matter. As a practical matter, the sooner you do so, the least costly resolution will be.

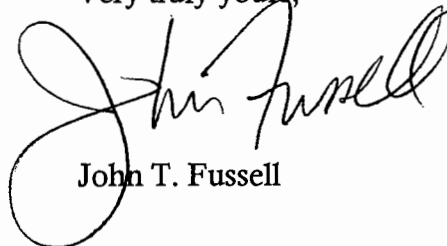
In an effort to settle this matter, I propose that you enter a Settlement Agreement with Local 12 Funds to make monthly installment payments toward satisfying this Judgment. The size of the monthly payments and the duration of the Agreement are matters we can discuss. As an incentive, if you agree to this course of action within the next **ten (10) days**, and you contact this office to work out a Settlement Agreement, this office

Daniel T. McGlone, President
January 31, 2006
Page 2

will waive the attorney fees of **\$1,400.00** that are included in the Judgment. In such case, the repayment total will be reduced to **\$7,031.33**.

Please contact me as soon as possible to discuss settlement options. You can reach me at (860) 290-9610 ext. 105 or (860) 305-4497 (cell) or at jfussell@cheverielaw.com. Upon our discussion and tentative agreement, I will present a Settlement Agreement proposal to the Trustees for their consideration and approval.

Very truly yours,



John T. Fussell

JTF/ldm

Enclosure

cc: Roger B. Gill, Funds Administrator
PLUMBERS LOCAL NO. 12 TRUST FUNDS

Kevin Cotter, Business Manager
PLUMBERS LOCAL UNION NO. 12

Jack McGinness, Business Agent
PLUMBERS LOCAL UNION NO. 12

JTF.12FUNDS.McGLONE PLUMBING.2006
LTR McGlone.NoticeofJudgment.01-31-06

ATTACHMENT 3

ROBERT M. CHEVERIE & ASSOCIATES P.C.

ATTORNEYS AND COUNSELLORS AT LAW

ROBERT M. CHEVERIE*
THOMAS M. BROCKETT
JOHN T. FUSSELL
GREGORY S. CAMPORA**
*ALSO ADMITTED IN MASSACHUSETTS
**ALSO ADMITTED IN NEW YORK

COMMERCE CENTER ONE
333 EAST RIVER DRIVE, SUITE 101
EAST HARTFORD, CONNECTICUT 06108

TELEPHONE 860-290-9610
FAX 860-290-9611
E-MAIL INFO@CHEVERIELAW.COM



May 19, 2006

SENT BY CERTIFIED MAIL
RRR NO. 7002 0860 3633 3546
REGULAR FIRST CLASS MAIL

Daniel T. McGlone, President
McGLONE PLUMBING, INC.
111 French Avenue
Braintree, MA 02184

*In response, please refer to:
Our File No. 05-347-FED-JTF*

Re: PLUMBERS LOCAL NO. 12 TRUST FUNDS
SECOND NOTICE OF JUDGMENT

Dear Danny:

This letter follows my telephone voicemail to you today with the same message contained in this letter. By letter dated January 31, 2006, this office forwarded to you the Judgment in the sum of **\$8,431.33** (enclosed) entered against McGlone Plumbing by Order of the Federal District Court on January 18, 2006, which represents:

\$6,311.64 – delinquent Funds contributions for the month of *July 2005*
\$424.51 – unpaid late fees that accrued as of the time of the lawsuit
\$295.18 – costs incurred by the Funds in filing and serving the lawsuit
\$1,400.00 – attorney's fees incurred in drafting and pursuing the lawsuit to Judgment

In addition, the Judgment provides for post-Judgment interest that will accrue each month on the Judgment sum of **\$8,431.33**. At one percent (1%) per month, interest will accrue this month at the rate of **\$84.31** and each month thereafter that the Judgment is not paid.

This office has not yet taken steps to actively enforce the Judgment because you had indicated to me, and subsequently to Jack McGinness, a desire to resolve the matter. However, you have not forwarded any payment or presented a counter-proposal to the settlement proposal contained within my letter dated January 31, 2006.

Daniel T. McGlone, President

May 19, 2006

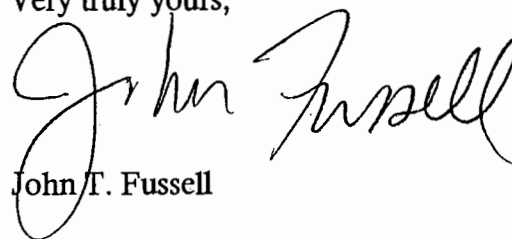
Page 2

The purpose of this letter is to provide a **final** courtesy notice to you that, if resolution of this matter, through payment or a Settlement Agreement providing for monthly payment of the Judgment, is not reached within the next *ten (10) calendar days* of the date of this letter, this office will initiate a post-Judgment remedy in Federal District Court. Generally, the process will begin with the filing of a *Petition for Examination of Judgment Debtor*. This will require you to come to Court and provide evidence of your assets. Typically, if a Judgment Debtor ignores the *Court Order for Examination and Notice*, the Court will issue a *capias* to have you arrested and delivered to Court for Examination.

For obvious reasons, we would prefer to avoid such a scenario if possible. However, please note that if Local 12 Funds is forced to utilize post-Judgment remedies, the full Judgment and all costs associated with the pursuit of that Judgment will be pursued against you. You must know by now that Plumbers Local 12 has a fiduciary duty to pursue this Judgment, and, I assure you, this office will pursue payment of the Judgment. In consideration of your long relationship with Plumbers Local 12 and the Funds, I would hope that you share the desire to resolve this matter in a reasonable fashion.

Please contact me as soon as possible to discuss settlement options. You can reach me at (860) 290-9610 ext. 105 or (860) 305-4497 (cell) or at jfussell@cheverielaw.com. Alternatively, you may contact Roger Gill at the Funds office to discuss settlement options (617) 288-5400. Upon our discussion and tentative agreement, I will present a Settlement Agreement proposal to the Trustees for their consideration and approval. I look forward to hearing from you.

Very truly yours,



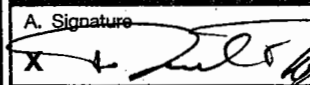
John T. Fussell

JTF/ldm

Enclosure

cc: Roger B. Gill, Funds Administrator
PLUMBERS LOCAL NO. 12 TRUST FUNDS

Kevin Cotter, Business Manager
Jack McGinness, Business Agent
PLUMBERS LOCAL UNION NO. 12

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature </p> <p><input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Daniel T. McGlone, President McGLONE PLUMBING, INC. 111 French Avenue Braintree, MA 02184</p>		<p>B. Received by (Printed Name)</p>	<p>C. Date of Delivery 5/22/06</p>
<p>2. Article Number (Transfer from service label)</p> <p>7002 0860 0002 3633 3546</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>PS Form 3811, January 2004 VHS</p>		<p>Domestic Return Receipt 102595-02-M-1540</p>	

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
<p>McGlone Plumbing, Inc. OFFICIAL USE</p>	
<p>Postage \$</p> <p>Certified Fee</p> <p>Return Receipt Fee (Endorsement Required)</p> <p>Restricted Delivery Fee (Endorsement Required)</p> <p>Total Postage & Fees \$4.64</p>	<p>May 19, 2006</p> <p>Postmark Here</p>
<p>Sent Daniel T. McGlone, President McGLONE PLUMBING, INC. 111 French Avenue Braintree, MA 02184</p>	
PS Form 3811, January 2004 VHS	Instructions